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8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 UNITED STATES OF AMERICA,) SA CR 08-223-AG
14)
Plaintiff,) PLEA AGREEMENT FOR DEFENDANT
15) JOSE G. GARIBAY
v.)
16)
JOSE G. GARIBAY,)
17)
Defendant.)
18)
19)

20 1. This constitutes the plea agreement between JOSE G.
21 GARIBAY ("defendant") and the United States Attorney's Office for
22 the Central District of California ("the USAO") in the above-
23 captioned case. This agreement is limited to the USAO and cannot
24 bind any other federal, state or local prosecuting,
25 administrative or regulatory authorities.

26 PLEA

27 2. Defendant agrees to plead guilty to counts one and six
28 of the indictment in United States v. Lin, et al., SA CR 08-223.

1 NATURE OF THE OFFENSES

2 3. In order for defendant to be guilty of count one, which
3 charges a violation of Title 21, United States Code, Section 846,
4 the following must be true: (1) there was an agreement between
5 two or more persons to distribute narcotics; and (2) the
6 defendant became a member of the conspiracy knowing of at least
7 one of its objects and intending to help accomplish it. In order
8 for defendant to be guilty of count six, which charges a
9 violation of Title 21, United States Code, Section 841(a)(1), the
10 following must be true: (1) the defendant knowingly possessed
11 methamphetamine or some other prohibited drug; and (2) the
12 defendant possessed methamphetamine, or some other prohibited
13 drug, with the intent to deliver it to another person. Defendant
14 admits that defendant is, in fact, guilty of these offenses as
15 described in counts one and six of the indictment.

16 4. Moreover, in order for defendant to be subject to the
17 statutory maximum and statutory minimum sentences set forth
18 below, the government must prove beyond a reasonable doubt that
19 defendant possessed with the intent to distribute at least 50
20 grams of methamphetamine. Defendant admits that defendant, in
21 fact, possessed with the intent to distribute at least 50 grams
22 of methamphetamine, specifically at least 145 grams of
23 methamphetamine, as described in counts one and six of the
24 indictment.

25 PENALTIES

26 5. The statutory maximum sentence that the Court can
27 impose for a violation of Title 21, United States Code, Section
28

1 846, is: life imprisonment; a lifetime period of supervised
2 release; a fine of \$4,000,000 or twice the gross gain or gross
3 loss resulting from the offense, whichever is greatest; and a
4 mandatory special assessment of \$100.00. The statutory maximum
5 sentence that the Court can impose for a violation of Title 21,
6 United States Code, Section 841(a)(1), is: life imprisonment; a
7 lifetime period of supervised release; a fine of \$4,000,000 or
8 twice the gross gain or gross loss resulting from the offense,
9 whichever is greatest; and a mandatory special assessment of
10 \$100.00.

11 6. Therefore, the total maximum sentence for all offenses
12 to which defendant is pleading guilty is: life imprisonment; a
13 lifetime period of supervised release; a fine of \$8,000,000 or
14 twice the gross gain or gross loss resulting from the offense,
15 whichever is greatest; and a mandatory special assessment of
16 \$200.00.

17 7. The statutory mandatory minimum sentence that the Court
18 must impose for a violation of Title 21, United States Code,
19 Sections 841(a)(1) and 846, is 10 years imprisonment, followed by
20 five years supervised release.

21 8. Supervised release is a period of time following
22 imprisonment during which defendant will be subject to various
23 restrictions and requirements. Defendant understands that if
24 defendant violates one or more of the conditions of any
25 supervised release imposed, defendant may be returned to prison
26 for all or part of the term of supervised release, which could
27 result in defendant serving a total term of imprisonment greater
28 than the statutory maximum stated above.

1 9. Defendant also understands that, by pleading guilty,
2 defendant may be giving up valuable government benefits and
3 valuable civic rights, such as the right to vote, the right to
4 possess a firearm, the right to hold office, and the right to
5 serve on a jury.

6 10. Defendant further understands that the conviction in
7 this case may subject defendant to various collateral
8 consequences, including but not limited to deportation,
9 revocation of probation, parole, or supervised release in another
10 case, and suspension or revocation of a professional license.
11 Defendant understands that unanticipated collateral consequences
12 will not serve as grounds to withdraw defendant's guilty plea.

13 11. Under 21 U.S.C. § 862a, defendant will not be eligible
14 for assistance under state programs funded under the Social
15 Security Act or Federal Food Stamp Act and will not be eligible
16 for federal food stamp program benefits; furthermore, any such
17 benefits or assistance received by defendant's family members
18 will be reduced to reflect defendant's ineligibility.

19 FACTUAL BASIS

20 12. Defendant and the USAO agree and stipulate to the
21 statement of facts provided below. This statement of facts is
22 sufficient to support pleas of guilty to the charges described in
23 this agreement and to establish the sentencing guideline factors
24 set forth in paragraph 16 below. It is not meant to be a
25 complete recitation of all facts relevant to the underlying
26 criminal conduct or all facts known to either party that relate
27 to that conduct.

28 Beginning in early 2006 and continuing to August 27, 2008,

1 defendant GARIBAY distributed and knowingly and intentionally
2 conspired with co-defendant Jerry Fanyuan Lin, Erik Damien
3 Vicente, and others to distribute more than 50 grams of
4 methamphetamine, specifically 145 grams of pure methamphetamine.

5 February 2007 Distribution of Methamphetamine

6 On or about February 8, 2007, co-defendant Vicente and
7 defendant GARIBAY had several recorded telephone conversations
8 regarding defendant GARIBAY supplying co-defendant Vicente with a
9 half pound of methamphetamine which co-defendant Vicente intended
10 to sell to co-defendant Lin. Subsequent to these conversations,
11 defendant GARIBAY provided co-defendant VICENTE with half a pound
12 of methamphetamine, specifically 145 grams of pure
13 methamphetamine.

14 Later that evening, co-defendant Lin met with an undercover
15 agent (UC) in Orange County, California in order for co-defendant
16 Lin to provide the UC with a half pound of methamphetamine. Co-
17 defendant Lin informed the UC that they would have to travel to
18 Los Angeles County to meet with the supplier of the
19 methamphetamine. Co-defendant Lin and the UC then met in San
20 Gabriel, California and the UC provided co-defendant Lin with
21 \$4,200 in cash to purchase the methamphetamine. Defendant Lin
22 gave to the money to a runner who in turn met with co-defendant
23 Vicente to obtain the methamphetamine. Co-defendant Vicente
24 provided the runner with the 145 grams of pure methamphetamine he
25 had received from defendant GARIBAY. The runner provided the
26 methamphetamine to co-defendant Lin who then gave it to the UC.
27 The UC gave co-defendant Lin an additional \$3,000 to pay for it.
28 Law enforcement tested the methamphetamine and laboratory tests

1 confirm that it was 145 grams of pure methamphetamine.

2 WAIVER OF CONSTITUTIONAL RIGHTS

3 13. By pleading guilty, defendant gives up the following
4 rights:

5 a) The right to persist in a plea of not guilty.

6 b) The right to a speedy and public trial by jury.

7 c) The right to the assistance of legal counsel at
8 trial, including the right to have the Court appoint counsel for
9 defendant for the purpose of representation at trial. (In this
10 regard, defendant understands that, despite his plea of guilty,
11 he retains the right to be represented by counsel -- and, if
12 necessary, to have the court appoint counsel if defendant cannot
13 afford counsel -- at every other stage of the proceeding.)

14 d) The right to be presumed innocent and to have the
15 burden of proof placed on the government to prove defendant
16 guilty beyond a reasonable doubt.

17 e) The right to confront and cross-examine witnesses
18 against defendant.

19 f) The right, if defendant wished, to testify on
20 defendant's own behalf and present evidence in opposition to the
21 charges, including the right to call witnesses and to subpoena
22 those witnesses to testify.

23 g) The right not to be compelled to testify, and, if
24 defendant chose not to testify or present evidence, to have that
25 choice not be used against defendant.

26 By pleading guilty, defendant also gives up any and all
27 rights to pursue any affirmative defenses, Fourth Amendment or
28 Fifth Amendment claims, and other pretrial motions that have been

1 filed or could be filed.

2 WAIVER OF DNA TESTING

3 14. Defendant has been advised that the government has in
4 its possession the following items of physical evidence that
5 could be subjected to DNA testing: methamphetamine seized in
6 February 2007. Defendant understands that the government does
7 not intend to conduct DNA testing of any of these items.
8 Defendant understands that, before entering a guilty pleas
9 pursuant to this agreement, defendant could request DNA testing
10 of evidence in this case. Defendant further understands that,
11 with respect to the offenses to which defendant is pleading
12 guilty pursuant to this agreement, defendant would have the right
13 to request DNA testing of evidence after conviction under the
14 conditions specified in 18 U.S.C. § 3600. Knowing and
15 understanding defendant's right to request DNA testing, defendant
16 voluntarily gives up that right with respect to both the specific
17 items listed above and any other items of evidence there may be
18 in this case that might be amenable to DNA testing. Defendant
19 understands and acknowledges that by giving up this right,
20 defendant is giving up any ability to request DNA testing of
21 evidence in this case in the current proceeding, in any
22 proceeding after conviction under 18 U.S.C. § 3600, and in any
23 other proceeding of any type. Defendant further understands and
24 acknowledges that by giving up this right, defendant will never
25 have another opportunity to have the evidence in this case,
26 whether or not listed above, submitted for DNA testing, or to
27 employ the results of DNA testing to support a claim that
28 defendant is innocent of the offenses to which defendant is

1 pleading guilty.

2 SENTENCING FACTORS

3 15. Defendant understands that the Court is required to
4 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
5 including the kinds of sentence and sentencing range established
6 under the United States Sentencing Guidelines ("U.S.S.G." or
7 "Sentencing Guidelines"), in determining defendant's sentence.
8 Defendant further understands that the Sentencing Guidelines are
9 advisory only, and that after considering the Sentencing
10 Guidelines and the other § 3553(a) factors, the Court may be free
11 to exercise its discretion to impose any reasonable sentence up
12 to the maximum set by statute for the crimes of conviction.

13 16. Defendant and the USAO agree and stipulate to the
14 following applicable Sentencing Guidelines factors:

15 Base Offense Level : 32 [U.S.S.G. § 2D1.1]
16 Subject to paragraph 20 below, defendant and the USAO agree not
17 to seek, argue, or suggest in any way, either orally or in
18 writing, that any other specific offense characteristics,
19 adjustments, or departures relating to the offense level be
20 imposed. Defendant agrees, however, that if, after signing this
21 agreement but prior to sentencing, defendant were to commit an
22 act, or the USAO were to discover a previously undiscovered act
23 committed by defendant prior to signing this agreement, which
24 act, in the judgment of the USAO, constituted obstruction of
25 justice within the meaning of U.S.S.G. § 3C1.1, the USAO would be
26 free to seek the enhancement set forth in that section.
27 Defendant also understands that defendant's base offense level
28 could be increased if defendant is a career offender under

1 U.S.S.G. §§ 4B1.1 and 4B1.2. In the event that defendant's
2 offense level is so altered, the parties are not bound by the
3 base offense level stipulated to above.

4 17. The parties agree that:

5 a) Defendant did not use violence or credible threats
6 of violence or possess a firearm or other dangerous weapon (or
7 induce another participant to do so) in connection with the
8 offenses charges in counts one and eight;

9 b) The offenses charged in counts one and six did not
10 result in death or serious bodily injury to any person; and

11 c) Defendant was not an organizer, leader, manager,
12 or supervisor of others in the offenses charged in counts one and
13 eight and was not engaged in a continuing criminal enterprise.

14 18. There is no agreement as to defendant's criminal
15 history or criminal history category.

16 19. Defendant and the USAO, pursuant to the factors set
17 forth in 18 U.S.C. § 3553(a)(1), (a)(2), (a)(3), (a)(6), and
18 (a)(7), further reserve the right to argue for a sentence outside
19 the sentencing range established by the Sentencing Guidelines.

20 20. The stipulations in this agreement do not bind either
21 the United States Probation Office or the Court. Both defendant
22 and the USAO are free to: (a) supplement the facts by supplying
23 relevant information to the United States Probation Office and
24 the Court, (b) correct any and all factual misstatements relating
25 to the calculation of the sentence, and (c) argue on appeal and
26 collateral review that the Court's Sentencing Guidelines
27 calculations are not error, although each party agrees to
28 maintain its view that the calculations in paragraph 16 are

1 consistent with the facts of this case.

2 DEFENDANT'S OBLIGATIONS

3 21. Defendant agrees that he will:

4 a) Plead guilty as set forth in this agreement.

5 b) Not knowingly and willfully fail to abide by all
6 sentencing stipulations contained in this agreement.

7 c) Not knowingly and willfully fail to: (i) appear for
8 all court appearances, (ii) surrender as ordered for service of
9 sentence, (iii) obey all conditions of any bond, and (iv) obey
10 any other ongoing court order in this matter.

11 d) Not commit any crime; however, offenses which would
12 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
13 not within the scope of this agreement.

14 e) Not knowingly and willfully fail to be truthful at
15 all times with Pretrial Services, the U.S. Probation Office, and
16 the Court.

17 f) Pay the applicable special assessments at or before
18 the time of sentencing unless defendant lacks the ability to pay
19 and submits a completed financial statement (form OBD-500) to the
20 USAO prior to sentencing.

21 THE USAO'S OBLIGATIONS

22 22. If defendant complies fully with all defendant's
23 obligations under this agreement, the USAO agrees:

24 a) To abide by all sentencing stipulations contained in
25 this agreement.

26 b) At the time of sentencing, provided that defendant
27 demonstrates an acceptance of responsibility for the offenses up
28 to and including the time of sentencing, to recommend a two-level

1 reduction in the applicable sentencing guideline offense level,
2 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,
3 move for an additional one-level reduction if available under
4 that section.

5 c) To recommend that defendant be sentenced to a term
6 of imprisonment at the low end of the applicable Sentencing
7 Guidelines imprisonment range provided that the total offense
8 level as calculated by the Court is 29 or higher and provided
9 that the Court does not depart downward in offense level or
10 criminal history category. If the low end of the range is below
11 the statutory mandatory minimum sentence that the court must
12 impose, the government will recommend the mandatory minimum
13 sentence. For purposes of this agreement, the low end of the
14 Sentencing Guidelines imprisonment range is that defined by the
15 Sentencing Table in U.S.S.G. Chapter 5, Part A, without regard to
16 reductions in the term of imprisonment that may be permissible
17 through the substitution of community confinement or home
18 detention as a result of the total offense level falling within
19 Zone B or Zone C of the Sentencing Table.

20 BREACH OF AGREEMENT

21 23. If defendant, at any time after the execution of this
22 agreement, knowingly violates or fails to perform any of
23 defendant's agreements or obligations under this agreement ("a
24 breach"), the USAO may declare this agreement breached. If the
25 USAO declares this agreement breached at any time following its
26 execution, and the Court finds such a breach to have occurred,
27 then: (a) if defendant has previously entered guilty pleas,
28 defendant will not be able to withdraw the guilty pleas, and (b)

1 the USAO will be relieved of all of its obligations under this
2 agreement.

3 LIMITED MUTUAL WAIVER OF APPEAL

4 24. Defendant gives up the right to appeal any sentence
5 imposed by the Court, and the manner in which the sentence is
6 determined, provided that (a) the sentence is within the
7 statutory minimum and maximum specified above and is
8 constitutional, and (b) the Court imposes a sentence within or
9 below the range corresponding to a total offense level of 29 (or
10 the mandatory minimum sentence), and the applicable criminal
11 history category as determined by the Court. Notwithstanding the
12 foregoing, defendant retains any ability defendant has to appeal
13 the Court's determination of defendant's criminal history
14 category and the conditions of supervised release imposed by the
15 Court, with the exception of the following: conditions set forth
16 in General Orders 318, 01-05, and/or 05-02 of this Court; the
17 drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and
18 3583(d); and the alcohol and drug use conditions authorized by 18
19 U.S.C. § 3563(b)(7).

20 25. The USAO gives up its right to appeal the sentence,
21 provided that (a) the sentence is within the statutory minimum
22 and maximum specified above and is constitutional, and (b) the
23 Court imposes a sentence within or above the range corresponding
24 to a total offense level of 29, and the applicable criminal
25 history category as determined by the Court.

26 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

27 26. Defendant agrees that if any count of conviction is
28 vacated, reversed, or set aside, the USAO may: (a) ask the Court

1 to resentence defendant on any remaining count of conviction,
2 with both the USAO and defendant being released from any
3 stipulations regarding sentencing contained in this agreement,
4 (b) ask the Court to void the entire plea agreement and vacate
5 defendant's guilty plea on any remaining count of conviction,
6 with both the USAO and defendant being released from all of their
7 obligations under this agreement, or (c) leave defendant's
8 remaining conviction, sentence, and plea agreement intact.
9 Defendant agrees that the choice among these three options rests
10 in the exclusive discretion of the USAO.

11 COURT NOT A PARTY

12 27. The Court is not a party to this agreement and need not
13 accept any of the USAO's sentencing recommendations or the
14 parties' stipulations. Even if the Court ignores any sentencing
15 recommendation, finds facts or reaches conclusions different from
16 any stipulation, and/or imposes any sentence up to the maximum
17 established by statute, defendant cannot, for that reason,
18 withdraw defendant's guilty pleas, and defendant will remain
19 bound to fulfill all defendant's obligations under this
20 agreement. No one -- not the prosecutor, defendant's attorney,
21 or the Court -- can make a binding prediction or promise
22 regarding the sentence defendant will receive, except that it
23 will be within the statutory maximum.

24 NO ADDITIONAL AGREEMENTS

25 28. Except as set forth herein, there are no promises,
26 understandings or agreements between the USAO and defendant or
27 defendant's counsel. Nor may any additional agreement,
28 understanding or condition be entered into unless in a writing

signed by all parties or on the record in court.

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

29. The parties agree and stipulate that this Agreement will be considered part of the record of defendant's guilty plea hearing as if the entire Agreement had been read into the record of the proceeding.

This agreement is effective upon signature by defendant and an Assistant United States Attorney.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

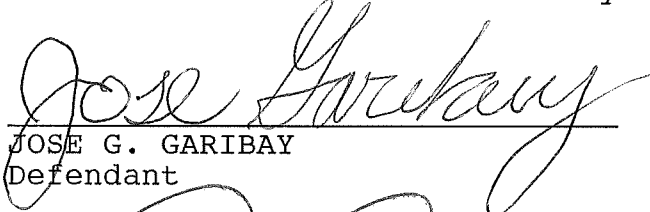
ANDRÉ BIROTTE JR.
United States Attorney



TERRI K. FLYNN
Assistant United States Attorney

8/24/11
Date

JOSE G. GARIBAY
Defendant



8/23/11
Date

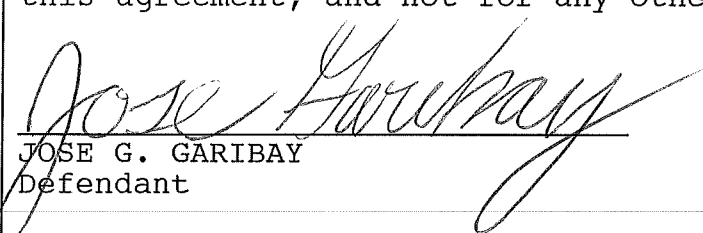
DANIEL McCURRIE
Attorney for Defendant
JOSE G. GARIBAY



August 23, 2011
Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.


JOSE G. GARIBAY
Defendant

8/23/11
Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am JOSE G. GARIBAY's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of a guilty plea pursuant to this agreement.



DANIEL MCCURRIE
Attorney for Defendant
JOSE G. GARIBAY



Date August 23, 2011